

United States Department of Justice
Office of the United States Trustee
110 N. College Avenue, Suite 300
Tyler, Texas 75202
(903) 590-1450

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE	§	
	§	
Van Hunter Development, Ltd	§	Case No. 10-40052
P. O. Box 540308	§	
Dallas, TX 75354-0308	§	
Tax ID / EIN: 20-4285736	§	
	§	
Debtor	§	Chapter 11
	§	

**UNITED STATES TRUSTEE'S MOTION
TO DISMISS OR CONVERT PURSUANT TO 11 U.S.C. § 1112(b);
OR IN THE ALTERNATIVE, FOR OTHER RELIEF;
WITH WAIVER OF 30-DAY HEARING REQUIREMENT**

PLEASE NOTE THAT THE COURT HAS SET THIS MOTION FOR HEARING:

HEARING: MONDAY, FEBRUARY 7, 2011 AT 2:00 P.M.

U. S. Bankruptcy Court
660 N. Central Expressway, 3rd Floor
Plano, Texas 75704

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE PRESIDING:

William T. Neary, the United States Trustee for Region 6 (“U.S. Trustee”) hereby files in the above-numbered bankruptcy case (“Case”) his Motion Dismiss or Convert Pursuant to 11 U.S.C. § 1112(b); or in the Alternative, for Other Relief (“Motion”) and respectfully states in support thereof:

Jurisdiction and Timeliness

1. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1334, 157(a), and the standing order of reference. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O). The predicate for the relief requested herein is Bankruptcy Code section 1112(b).

Background

2. On January 4, 2010 (“Petition Date”), Van Hunter Development, Ltd. (“Debtor”) initiated the Case by filing a voluntary petition for relief under chapter 11 of Title 11.

3. No creditors’ committee has been appointed in the Case. The Debtor controls its assets, which as of the Petition Date consisted of 32 high-end real estate lots developed and ready to sell and a nominally valued amount of personal property.

4. The Debtor advised the U.S. Trustee at the initial debtor interview and the creditors’ meeting that it intended to either restructure its secured debt or sell certain of the lots to pay its secured creditors, Compass Bank and Frost National Bank.

5. There has not been any substantive activity in the Case since July 29, 2010.

6. On July 29, 2010, the Court signed its Agreed Order Regarding Emergency Motion To Compel Debtor to Assume or Reject Executory Contract [docket no. 49] to permit the Debtor to retain a third party to collect assessments and perform certain duties under a certain Declaration of Covenants, Conditions, and Restrictions for Chateau Du Lac.

7. On June 2, 2010, the Court signed its Order Extending the Exclusivity Periods in which to Propose and Solicit Acceptances to a Plan of Reorganization [docket no. 35] in which the Debtor's exclusive period to file a plan was extended to August 4, 2010.

8. On April 23, 2010, the Court signed its order lifting the automatic stay as to Compass Bank [docket no. 24], one of the Debtor's two secured creditors.

9. Aside from the aforementioned items, no meaningful activity has occurred in the Case. As of January 5, 2011, one year into the Case, the Debtor has not filed a motion to sell any of the real property or a plan or disclosure statement.

10. The last filed monthly operating report was for the period ending October 31, 2010. Every operating report filed in the Case to date has reflected a small negative monthly cash flow. The Debtor reported total cash in January, 2010, of \$2,728.45 and reported total cash ending October of \$1,627.13. The filed monthly operating reports indicate virtually no economic activity has occurred in the Case.

11. On October 5, 2010, the U.S. Trustee, through undersigned counsel, informally inquired with Debtor's counsel concerning the status of the Case. Debtor's counsel generally stated that he believed a settlement could be reached with the remaining secured creditor in December 2010. The only filing in the Case in the month of December was the October monthly operating report on December 2, 2010.

12. The apparent lack of progress in the Case since its filing in January, 2010, suggests that the Debtor cannot or will not use chapter 11 for the benefit of creditors.

Applicable Law and Argument

13. Section 1112(b) provides,

. . . absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors

and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

14. Cause exists to convert the Cases because the Debtor does not demonstrate a reasonable likelihood for reorganization. 11 U.S.C. § 1112(b)(4)(A).

15. In addition, the Debtor has failed to timely meet reporting requirements. 11 U.S.C. § 1112(b)(4)(F).

16. Under section 1112(b), the Court determines whether dismissal or conversion is in “the best interest of creditors.” Under the facts of this Case, the Debtor does not appear able to effectively use chapter 11 for the benefit of creditors, so the Case should be dismissed or converted. If the Court determines dismissal best serves the interests of creditors, sufficient “cause” exists to dismiss the Case with prejudice to re-filing for 180 days. 11 U.S.C. § 349.

17. In the alternative, the U.S. Trustee asserts that cause exists to establish appropriate confirmation or case resolution deadlines. 11 U.S.C. § 105(d)(2)(B).

WHEREFORE, the U.S. Trustee respectfully requests that the Court issue an order (a) dismissing the Cases; (b) converting the Cases to chapter 7, or (c) subjecting the Debtor to confirmation deadlines; and granting such other further appropriate relief.

Dated: January 5, 2011

Respectfully submitted,

William T. Neary
United States Trustee
Region 6

By: /s/ Marc Salitore
Timothy W. O'Neal
Asst. U.S. Trustee, SBOT 15283350
Marcus F. Salitore
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served on the following listed persons through the court's electronic notification system as permitted by Appendix 5005 III E to the Local Rules of the U.S. Bankruptcy Court for the Eastern District of Texas, or by first class United States Mail, postage prepaid, no later than January 5, 2010.

/s/ Marc Salitore
Marcus F. Salitore

Debtor:

Van Hunter Development, Ltd
P. O. Box 540308
Dallas, TX 75354-0308

Debtor's Attorney:

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Matrix Follows:

Label Matrix for local noticing
0540-4
Case 10-40052
Eastern District of Texas
Sherman
Wed Jan 5 13:41:50 CST 2011

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Williams Scotsman, Inc.
8211 Town Center Dr.
Baltimore MD 21236-5904

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

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Bypassed recipients	19
Total	77